

# THE NORMATIVE CHARACTER OF THE INSTITUTION OF CUMULATIVE JUDGEMENT IN CIVIL TRIAL: A COMPARATIVE STUDY

Dr. Marzena Andrzejewska

University of Siedlce, Poland

e-mail: marzena.andrzejewska@uws.edu.pl; <https://orcid.org/0000-0002-7578-4095>

Dr. Maciej Andrzejewski

The Pontifical University of John Paul II in Kraków, Poland

e-mail: maciej.andrzejewski@upjp2.edu.pl; <https://orcid.org/0000-0001-8440-2426>

## Abstract

The aim of this study is to show how the institution of consolidated cases in Polish civil proceedings was shaped in the context of Polish criminal procedure and canon law. A comparative analysis *de lege lata* will help to determine the nature of the procedure aimed at issuing a sentence in cases that have been combined into one trial considering their subject matter, and thus answer the question whether there is a cumulative judgement in each of the procedures and how it is understood by the legislator in civil, criminal and canon law. The analysis is an important novelty in research on the institution of cumulative judgement because it enables a comparison of the institution not only within the framework of the state system of law, but also within the autonomous normative system created by canon law.

**Keywords:** cumulative judgement, civil trial, criminal trial, canon law

## Introduction

Dealing with civil cases cumulatively invites a reflection on the normative nature of the proceedings in question (leading to the issuance of a cumulative judgement) and then a reflection on the research problem that essentially involves asking about the essence and procedural effects of a cumulative judgement, as well as determining to what extent it interferes with the basis of the claims asserted?

Therefore, the purpose of the present analysis is to show how the institution of consolidated cases in the Polish civil trial is shaped as opposed to Polish penal procedure and canon law. This will serve to determine the nature of the procedure leading to a judgement in cases that have been merged due to the affinity of their subject matters, and thus answer the question of whether cumulative judgements exist in each procedure and how they are construed by the legislator in civil, criminal and canon law? To answer the question posed in the paper's title, we shall employ a comparative legal method, which will enable an assessment of the normative regulations underpinning the institution of cumulative judgement and the respective proceedings leading to its issuance in two legal orders: state order (Polish, with respect to civil and criminal proceedings) and canonical (ecclesiastical) order. A comparative analysis along these lines will hopefully make it possible to pinpoint the similarities and differences between the two legal orders with regard to cumulative judgements and prove the claim that – despite the fact that each of the described procedures apply normative regulations on aggregating cases – the normative nature of the cumulative judgement has been shaped differently in each of them.

Our analysis of the issue in question is, therefore, intended to answer the following: Does the implementation of the *connexorum idem est iudicium* principle applied in civil trial, criminal trial, and canon law contravene the *entia non sunt multiplicanda praeter necessitatem* principle? Does the outcome (i.e. cumulative judgement or concurrent sentence) not exemplify a *fallacia aequivocationis* committed by the legislator in the context of the directives stemming from § 10 of the Order of the Prime Minister of 20 June 2002 on the Principles of Legislative Drafting, according to which equal terms must be used to designate equal concepts, and different concepts are not to be rendered with the same terms?<sup>1</sup>

## 1. Cumulative judgement in civil proceedings

The maintenance of special procedural economy, which amounts to the joint examination of several cases and the subsequent issuance

---

<sup>1</sup> Announcement of the President of the Council of Ministers of 29 February 2016 on the Uniform Text of the Regulation of the President of the Council of Ministers on “Principles of Legislative Drafting,” Journal of Laws, item 283.

---

of a joint decision, is Article 219 of the Code of Civil Procedure.<sup>2</sup> This is but one example of an extended, joint examination of cases in civil procedure, in addition to, for instance, the possibility of joining the main suit with a counterclaim, as provided *a contrario* in Article 218 CCP. The effect of such joint examination of cases and, as a result, combined judgements, by virtue of Article 219 CCP, is called a cumulative judgement in the literature [Góra-Błaszczkowska 2016, 656; Gudowski 2020, 669-74; Rutkowska and Rutkowski 2020, 652; Wiśniewski 2013, 283-92]. The term has become so entrenched in litigation literature that it is also invoked in judicial case law, although it still has not found its normative confirmation *expressis verbis*.<sup>3</sup>

By virtue of Article 219 CCP the court may order a consolidation of several separate cases pending before it to be heard or settled in aggregate as long as they are related to each other or it was possible to initiate them by a single action.<sup>4</sup> The solution in question is also generally permissible in non-litigious proceedings, pursuant to Article 13 § 2 CCP. A joint examination of the case is justified by the connection existing between the facts in which each claim is grounded.<sup>5</sup>

The court's decision to consolidate cases does not give rise to an accumulation of claims referred to in Article 191 CCP. The connection between individual claims should be understood as a common factual basis or a connection between the facts constituting the basis for the requests for applications, which allows the same evidence to be used in a joint examination.<sup>6</sup> Speaking of the accumulation of claims, it is worth stressing that the civil court is not competent *a contrario* Article 219 CCP to verify

---

<sup>2</sup> Act of 17 November 1964 – The Code of Civil Procedure, Journal of Laws No. 2023, item 2760, as amended [henceforth: CCP].

<sup>3</sup> See, e.g., Order of the Supreme Court of 2 July 2009, III PZ 5/09, Lex no. 551888; Judgement of the Court of Appeal in Gdańsk of 30 December 2019, V ACa 80/19, Lex no. 2946480; Judgement of the Court of Appeal in Szczecin of 21 January 2021, I ACa 542/20, Lex no. 3164507.

<sup>4</sup> Since the procedural codification became effective, this provision has not undergone legislative changes and is in force in its original wording, which is extremely peculiar considering the various amendments of this procedure.

<sup>5</sup> Order of the Supreme Court (7) of 1 December 2011, I CSK 83/11, Lex no. 1102835.

<sup>6</sup> Judgement of the Court of Appeal in Katowice of 24 May 2016, III AUa 667/16, Lex no. 2333803; Judgement of the Court of Appeal in Łódź of 22 January 2021, I Aga 222/20, Lex no. 3171187.

the accumulation of claims in question made by the claimant in the statement of claim, when the consolidation complies with the norm under Article 191 CCP. However, it is still possible to separate the principal claim from the examination of the counterclaim by virtue of Article 218 CCP and issue a partial judgement based on Article 317 CCP.<sup>7</sup>

It follows from the literal wording of the provision that it is a procedural solution that the court may apply freely, being in essence facultative. This means, therefore, that the non-application of Article 219 CCP cannot form the grounds of the objection formulated. Only in some proceedings, by virtue of *lex specialis*, is it required that specific types of cases be examined and adjudicated cumulatively. This concerns, for example, Article 445 CCP, which provides that during divorce and separation proceedings, cases for the satisfaction of family needs and maintenance allowance between spouses or between them and their minor children regarding benefits due from the beginning of the lawsuit may not be separately examined. This does not apply to the provisions on proceedings to secure claims. Article 618 CCP, for example, bears some resemblance. It provides that in proceedings concerning the dissolution of joint property ownership the court can jointly recognize litigations for the right to demand the dissolution of joint property ownership and for the right to property, or for mutual claims of co-owners on the grounds of possessing a thing. When making the decision *ex officio*, the court issues an order that is not appealable by complaint.<sup>8</sup> Nevertheless, this rigour is mitigated in some measure by the fact that a decision to consolidate cases is reversible [Manowska 2022].

As emphasized in the case law involving the provision in question, consolidating several cases does not constitute a new civil case, but is only a technical operation. This fact is reflected not only in the handing down of cumulative judgements, but also in keeping files jointly under a single file reference (or the file reference of the earliest files).<sup>9</sup> This assumption underlies the fact that the judgement in question should contain separate resolutions of each of the combined cases, and each can be contested

---

<sup>7</sup> Judgement of the Court of Appeal in Gdańsk of 23 June 2016, I ACa 79/16, Lex no. 2152460.

<sup>8</sup> Order of the Supreme Court of 25 July 1978, IV CZ 115/78, Lex no. 2337.

<sup>9</sup> § 39 of the Ordinance of the Minister of Justice of 19 June 2019, on the Organization and Scope of Court Secretariats and Other Departments of Court Administration, Dz. Urz. MS. of 2019, item 138.

individually.<sup>10</sup> In this sense, also, the calculation of the matter in dispute (and the contested matter at the control stage) is performed separately for each of the combined cases, which for the admissibility of a cassation appeal requires meeting the statutory threshold for the value of the object of appeal of each case separately.<sup>11</sup> Moreover, under Article 219 CCP, even the issuance of a judgment as to only one of the cases combined for joint examination does not have the nature of a partial judgement.<sup>12</sup> The separateness and substantive independence of the combined cases is also reflected at the stage of joint examination and adjudication on the reimbursement of litigation costs, since in this aspect a party is still entitled to a separate decision in each of the combined cases.<sup>13</sup>

If we are talking about merely a technical consolidation of examined cases for joint adjudication, then there is no question of some special kind of joint participation, although one can speak of multi-subjectivity on either sides of the litigation.<sup>14</sup> Nor does the institution in question produce effects regarding the court's competence, whether or not the combined cases could have been based on a single action.<sup>15</sup> Since Article 219 CCP deals with the joint examination and adjudication of cases, it will be inadmissible to consolidate cases pending in different courts, even if they could be subsumed under a single lawsuit.<sup>16</sup>

The institution referred to in Article 219 is thought mainly to be capable of accelerating the course of examination proceedings in combined cases

---

<sup>10</sup> Orders of the Supreme Court: of 29 January 2014, II UZ 69/13, Lex no. 1424854; of 12 September 2013, II CSK 105/13, Lex no. 1375146; of 28 February 2013, IV CSK 719/12, Lex no. 1314439.

<sup>11</sup> Decision of the Supreme Court of 2 July 2009, III PZ 5/09, Lex no. 551888; Orders of the Supreme Court: of 7 December 2017, V CZ 82/17, Lex no. 2428821; of 6 June 2019, II CSK 624/18, Lex no. 2688852.

<sup>12</sup> Judgement of the Court of Appeal in Katowice of 24 May 2016, III AUa 667/16, Lex no. 2333803.

<sup>13</sup> Judgement of the Court of Appeal in Białystok of 16 July 2018, I ACa 191/18, Lex no. 2572274.

<sup>14</sup> Judgement of the Court of Appeal in Gdańsk of 30 December 2019, V ACa 80/19, Lex no. 2946480.

<sup>15</sup> Order of the Supreme Court of 6 December 1973, I PZ 71/73, Lex no. 7351.

<sup>16</sup> Judgement of the Supreme Court of 4 May 1978, IV PR 95/78, Lex no. 2290. For a contrary position see Judgement of the Supreme Court of 1 June 1967, I PR 169/67, Lex no. 4599.

(procedural economy), especially if the court can utilise the same factual and evidentiary material. As a procedural institution, a cumulative judgement contributes to a comprehensive, multifaceted resolution of the entire conflict in a single civil trial [Gapska and Studzińska 2020]. This *ratio legis* of this institution was indicated in one resolution of the Supreme Court containing recommendations on further streamlining judicial proceedings.<sup>17</sup> Such an understanding of this provision, then, does not permit an extensive or teleological interpretation.<sup>18</sup>

The cumulative judgement in a civil trial is only a procedural possibility, created when the cases are examined, and is also a natural extension of their combined examination before the same procedural authority. Apart from aggregating the hearing at a trial or a session and the conflation of the decisions in a single combined ruling, this institution does not produce further effects under substantive law, while the procedural effects are limited to a common forum for recognition and adjudication. The incorporation of resolutions in a single judgement does not rule out the independence of the combined cases.<sup>19</sup> What remains common here is the recognition forum – a court that separately adjudicates these matters – and the official location where the rulings will be posted. We cannot say, then, that this is a supplementary or executive proceeding. A cumulative judgement is handed down in the course of combined examination proceedings, before any issue to be adjudicated becomes final, so the result of the adjudication of consolidated cases is included in a joint procedural judgement, referred to in the literature and case law as a cumulative judgement.

## 2. Cumulative sentence in criminal trial

Due to the fact that the procedure for issuing a cumulative sentence is not exhaustively regulated in chapter 60 of the Code of Penal Procedure,<sup>20</sup> by virtue of Article 574 sentence 1, in matters not regulated

---

<sup>17</sup> Resolution of the Supreme Court of 15 July 1974, Lex no. 1730.

<sup>18</sup> Order of the Supreme Court of 1 December 2011, I CSK 83/11, Lex no. 11002835; Judgement of the Supreme Court of 22 September 1967, I CR 158/67, Lex no. 678.

<sup>19</sup> Judgement of the Supreme Court of 22 September 1967, I CR 158/67, OSNCP 1968, no. 6, item 105.

<sup>20</sup> Act of 6 June 1997 – The Code of Penal Procedure, Journal of Laws of 2024, item 37, as amended [henceforth: CPP].

by the provisions of chapter 60, the procedure leading to the handing down of a cumulative sentence are governed by the provisions on ordinary proceedings before the court of first instance. It is rightly noted in scholarship that while adjudicating in cumulative sentence proceedings, the court must first determine whether or not the matter at hand is autonomously regulated in chapter 60. If the answer is negative – if the issue at hand is not resolved by applying the provisions of Articles 568a-577 CPP, the provisions on ordinary proceedings before the court of first instance, and, if necessary, the provisions of the general part of the Code are to be applied as required [Świecki 2015, 673].<sup>21</sup>

Scholarship, however, is far from agreeing about the cumulative sentence proceedings and its constitutive elements. In the literature, basically, we encounter three different groups of opinions on the connection between the procedure leading to a cumulative sentence and a certain kind of judicial proceedings. This kind of proceedings was viewed as a phase of judicial proceedings, a stage of executive proceedings, or proceedings of a supplementary nature.

The first approach assumes that proceedings leading to a cumulative sentence are a consecutive stage that ends the jurisdictional proceedings, and do not constitute enforcement proceedings. To justify this position, it was once indicated that the provision on a cumulative sentence was opportunistic and necessary, and its purpose was to apply the disposition of Articles 31-33 of the 1932 Penal Code,<sup>22</sup> where it was impossible to award a cumulative penalty in one sentence for all crimes for reasons of fact or those related to the economy of the proceedings [Peiper 1933, 517].<sup>23</sup> However, even if legal authors point out that the procedure leading to a cumulative sentence is part of the jurisdictional stage, they also noted that there might exist cases where cumulative sentencing occurs when the proceedings reach the executive stage, for example, when the perpetrator

---

<sup>21</sup> Order of the Court of Appeal in Kraków of 28 August 1997, II AKz 147/97, Lex no. 30504; Order of the Court of Appeal in Katowice of 6 July 2005, II AKz 378/05, Lex no. 175066.

<sup>22</sup> Order of the President of the Republic of Poland of 11 July 1932 – The Penal Code, Journal of Laws No. 60, item 571.

<sup>23</sup> See also Śliwiński 1948, 211. This view can also be encountered in scholarship [Kowalski 2017, 75] despite the amendments of the provisions on cumulative penalties and proceedings leading to cumulative sentences.

has already served the sentence imposed by one of the final sentences [Lipczyńska and Ponikowski 1986, 359].

The second opinion regarding the nature of proceedings leading to a cumulative sentence is that it is an executive stage, because it takes place when the proper proceedings are complete and the sentences handed down are now enforceable, while the convicted person, not the accused, remains party to these proceedings [Szejnman 1933, 51].

The most prevalent view – both in doctrine and jurisprudence – is that proceedings leading a cumulative sentence are supplementary.<sup>24</sup> It has been pointed out that it is neither an executive procedure leading to the execution of a ruling on matters settled in ordinary or special proceedings, nor is it a jurisdictional proceeding that begins with the filing of an indictment and ends with the sentence becoming final, and leads to the determination of the defendant's guilt or innocence. However, cumulative sentence proceedings are justified only when an accumulated penalty is imposed on a perpetrator convicted by final sentences [Kwiatkowski 1988, 99-100]. Analysing the view that proceedings leading to a cumulative sentence have a supplementary character, we must not ignore opinions that it also has a subsidiary, and therefore accessory, nature. It is emphasised that their non-autonomous character is due to the circumstances under which this procedure is initiated. This is possible only if two convictions have been issued imposing penalties subject to aggregation, and for various reasons the combined penalty has not been awarded in the jurisdictional proceedings, and the issue must be dealt with in separate proceedings. The above premises supported the subsidiary nature of the proceedings leading to a cumulative sentence [Kala 2003, 51-52; Kwiatkowski 1988, 101].

At the same time, it should be noted that some authors put supplementary proceedings on a par with separate proceedings [Kala 2003, 53].

---

<sup>24</sup> It was already during the interwar period that the highest judicial instance drew attention to that fact that failure to award a cumulative penalty in the sentence can be addressed independently by a supplementary sentence (Decision of the Supreme Court of 17 January 1936, 1 K 1328/35, Lex no. 373501). This view was also supported under the previous law on penal procedure, see Daszkiewicz 1976, 54-57; Krauze 1969, 273; Marszał 1982, 20. See also in the relevant case law: Judgement of the Court of Appeal in Białystok of 12 December 1997, II AKz 305/97, Lex no. 34852. This is not an isolated view, also in the currently applicable CPP, see Wędrychowski 1999, 457; Świątłowski 2015, 1351.



---

Others point out that separate proceedings should be called follow-up proceedings [Gaberle 2004, 195-96]. With respect to previous codifications, it was also indicated that the term “separate proceedings” should cover only proceedings that are governed by provisions separate to the Code of Penal Procedure [Kalinowski 1972, 25].<sup>25</sup>

Currently, however, follow-up proceedings should be understood as proceedings conducted after the sentence becomes final in order to resolve issues revealed after the judgment becomes final [Waltoś and Hofmański 2023, 49]. Supplementary proceedings, on the other hand, are understood in the literature to mean additional proceedings conducted alongside the main proceedings to deal with matters that were not resolved at an earlier stage, either because of an oversight or the occurrence of specific circumstances after the ruling was handed down. It is important to note in this context that the supplementary proceedings must be explicitly sanctioned by law, while in other cases it is possible to supplement or adjust the ruling only by ordinary or extraordinary means of appeal [Cieślak 2011, 58]. On the face of it, the semantic overlap between the definition of follow-up and supplementary proceedings might lead us to believe that they are synonymous and can be used interchangeably in criminal process. For this reason, it is important to analyse the reasons for incorporating supplementary proceedings into the law on criminal proceedings.

This was dictated by practical considerations, as one might want to avoid the necessity to initiate appellate proceedings in each case in order to supplement the ruling with resolutions regarded as having an accessory character [Rogoziński 2016].<sup>26</sup> Under the 1969 Code of Penal Procedure<sup>27</sup> and by virtue of its Article 368, supplementary proceedings were only possible if the ruling did not contain one of the resolutions indicated

---

<sup>25</sup> This “separateness” may not only result from the location of a particular procedure within or outside the Code. It may stem from the separateness of the subject matter of the trial, if one assumes it to be a responsibility for proscribed acts, but other than offences [Światłowski 2008, 89].

<sup>26</sup> Interestingly, the only proceeding that is overtly called a “supplementary proceeding” is the institution regulated by the currently effective Article 420 CPP. Under the current codification, it can involve the recognition of provisional custody, remanding or applied preventive measures listed in Article 276 CPP, or material evidence, including forfeiture. A sentence is supplemented by an order, which is subject to complaint.

<sup>27</sup> Act of 19 April 1969 – The Code of Penal Procedure, Journal of Laws No. 13, item 96.

in the Code. In contrast, if the decision was incomplete, the ruling could be modified only using ordinary or extraordinary means of appeal.<sup>28</sup> In the current Code, under Article 420 § 2, if the court incorrectly credits, for example, the period of provisional custody against the sentence imposed, there is a procedural possibility of supplementing the sentence specified in § 1 of the provision in question. At the same time, it is important to remember that § 1 regulates supplementing proceedings, and § 2 regulates the adjustment of a sentence by order [ibid.].

At this point, it is important to underscore that the amendment of the substantive criminal law and penal process of 1 July 2015 changed the opinions of jurists on the character of proceedings leading to a cumulative sentence. Following this amendment, it was pointed out that this proceeding could not be classified as a jurisdictional proceeding, let alone speaking of its supplementary and subsidiary character. Apparently, the character of proceedings leading to a cumulative sentence has become closer to the executive function; this is demonstrated by the fact that, after the amendment, it was possible to apply a cumulative penalty to cover individual sentences imposed by convictions for offences that the perpetrator committed between the dates of the individual sentences, and such a penalty can encompass not only individual penalties, but also previously imposed cumulative sentences (awarded by both a conviction and a cumulative sentence) [Kala and Klubińska 2017, 5-6].<sup>29</sup>

The three concepts we have discussed above with respect to the nature of proceedings leading to a cumulative sentence, albeit prevailing in scholarship and case law, are not the only ones available. Proceedings held after a judicial decision becomes final can also be divided into corrective and follow-up proceedings, and the adjudication of a cumulative penalty in a cumulative sentence is considered to be the latter [Waltoś and Hofmański 2023, 49].

---

<sup>28</sup> This is the case with the crediting of pretrial detention [Grajewski and Skrętowicz 1996, 266]. See also: Order of the Supreme Court of 27 March 1972, Z 14/72, Lex no. 18436; Resolution of the Supreme Court (7) of 12 October 1972, VI KZP 26/72, Lex no. 18506; Judgement of the Supreme Court of 4 May 1988, V KRN 76/88, Lex no. 17880.

<sup>29</sup> In this, however, Dariusz Kala departs from his view that the proceedings leading to a cumulative sentence are supplementary in nature [Kala 2003, 55].

Proceedings leading to a cumulative sentence are also referred to in the literature as extra- instance proceedings due to the fact that their subject matter pertains to final sentences, which cannot be challenged by ordinary means of appeal. Therefore, the activities carried out in these proceedings will have an extra-instance character [Mierzejewski 2010, 371]. It should be pointed out in this regard that the idea of proceedings being instance-based is that there exists a procedural mechanism allowing a court of higher instance to review the decision of the court of first instance, when initiated by an appellate measure [Marszał 2000, 704].

Since the ordinary course of proceedings leading to a cumulative sentence is modified on account of their subject matter – which entails the problem of how to explicitly classify these proceedings as either the jurisdictional or the executive phase – we come across the designation *sui generis* describing this kind of proceedings [Kala 2003, 52-55].<sup>30</sup> It follows that these proceedings differ fundamentally from ordinary proceedings before the court of first instance, even though the directive described in Article 574 CPP prescribing that the provisions governing first-instance proceedings be applied *mutatis mutandis* to the proceedings leading to a cumulative sentence might imply, at first glance, something quite different. The appropriate application of regulations in proceedings leading to a cumulative sentence entails an overhaul of the entire procedure, including the initiation of proceedings, their course, and the options of challenging the decision rendered. If the procedure leading to a cumulative sentence is referred to as *sui generis* proceedings due to its unique features, then also the outcome of the proceedings so shaped must demonstrate its “peculiarity” in relation to the conviction pronounced in the main proceedings, which is why a cumulative sentence can be called a *sui generis* sentence in Polish criminal process.

### 3. The concurrent sentence in canonical process

A complaint enables the petitioner to assert his or her rights if they formulate a demand, while the respondent has the option to see the submitted

---

<sup>30</sup> Following Kala, Cieślak and Woźniewski 2012, 321 consider proceedings leading to a cumulative sentence to be *sui generis* proceedings. On the proceedings leading to a cumulative sentence as a generic stage of trial, see Kwiatkowski 1988, 101.

demand, and the judge has the opportunity to adjudicate the matter in dispute. Therefore, canonical doctrine emphasises that complaint is necessary both for the benefit of the litigants and the arbiter of this dispute – the judge [Szytchmiller 2003, 43-46]. The literature offers three interpretations of the term “complaint”. In the substantive sense, “it is the judicial assertion of one’s rights against another physical or legal person.” Procedurally, complaint is “a procedural act whereby a party seeks protection of his or her rights before a court.” A complaint is also understood as “a pleading containing a request for legal protection (*libellus* or *libellus introductorius*)” [Szytchmiller 2000, 137]. The complaint is vital not only in that it initiates canonical process, but primarily because its proper formulation allows the process to be accepted by a judge or the presiding judge of a collegial court.

A canonical trial commences only when a decree accepting the petitioner’s complaint introducing the suit (*libellus*) is issued, not when the complaint is filed. The earlier stage is called a case, and the dispute is assigned to a judge, given an appropriate reference, and registered in the court file. It is important to highlight here that whether the court will adjudicate the case is not yet certain at this stage [Greszata 2007, 136]. A complaint is seen not only as a pre-condition for canonical process but is also a manifestation of respect for human rights as a person can follow a judicial route and make use of a canonical trial [Szytchmiller 2000, 44-46].

It is important to note that a multiple and aggregate complaint can be presented as one when several actions occur between the same group of persons, or when matter in dispute of several complaints is combined, and also if a single court has jurisdiction over each of these complaints [Greszata 2007, 140]. In accordance with Canon 1414 of the 1983 Code of Canon Law, in principle, one and the same tribunal can hear interconnected cases “by reason of connection”.<sup>31</sup> This means that in ordinary trial the principle of *connexorum idem est iudicium* operates, whereby interconnected cases pertain to one process, causing the same court to have jurisdiction to combine different cases. The purpose of the canon in question is sought in the principles of procedural economy and harmony, in order not only to

---

<sup>31</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317; English text available at: [https://www.vatican.va/archive/cod-iuris-canonici/cic\\_index\\_en.html](https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html) [henceforth: CIC/83]; legal state as of 18 May 2022.

avoid wasting time and money, but also to save the parties the inconvenience of having to appear before different courts at the same time, and prevent the possibility of different rulings handed down in related cases [Carmen Peña 2007, 845]. The connection between cases thus relates to the objective relationship associated with the believer's right to request an ecclesiastical judge to adjudicate and the causal relationship – that is, the reasons for demanding such services. However, the grounds for the interconnectedness of cases are not the subjective relationship between different cases involving the same petitioner or respondent [Krukowski 2007, 27-28].

On the other hand, in annulment process, according to Article 15 of the instruction *Dignitas connubii*, when a marriage has been challenged on different grounds of nullity is to take place, “those grounds, by reason of connection, are to be considered by one and the same tribunal in the same process.”<sup>32</sup> By this norm, all cases concerning one marriage must be brought and heard in one court, which should accept and adjudicate them for the sake of procedural economy and uniformity of jurisprudence, and so that several courts will not deal with the same case [Sztymchmiller 2007b, 49-50]. This rule means that nullity cases that could be brought simultaneously by either spouse before another court will be examined together in a single trial [Carmen Peña 2007, 845]. The interconnectedness of cases is a duty that rests not only on the judge, but also on the parties, both before and during the joinder of the issue [Del Amo 2011, 1057]. Even if the parties to a nullity case do not take into account the directives of the norm in question, it is incumbent on the court to proceed in such a way that it is applied in the trial [Sztymchmiller 2007b, 49]. Were the interconnection between cases not obligatory, it would be difficult to obtain a just sentence and, in a nullity case, also to discover the objective truth about the validity or invalidity of the marriage [Carmen Peña 2007, 850].

Considering the essence of the process in question, it seems pertinent to call it “aggregate proceedings”, because the court is required to examine several cases together. Hence the question, what is the result of these proceedings? To answer that, we need to analyse the types of sentences

---

<sup>32</sup> Pontifical Council for Legislative Texts, Instruction to be observed by diocesan and interdiocesan tribunals in handling causes of the nullity of marriage *Dignitatis connubi*, [https://www.vatican.va/roman\\_curia/pontifical\\_councils/intrptxt/documents/rc\\_pc\\_intrptxt\\_doc\\_20050125\\_dignitas-connubii\\_en.html](https://www.vatican.va/roman_curia/pontifical_councils/intrptxt/documents/rc_pc_intrptxt_doc_20050125_dignitas-connubii_en.html) [henceforth: DC].

handed down in canonical process and, first and foremost, define the term “sentence”.

A sentence concludes the legal proceedings pending in the canonical forum before an ecclesiastical tribunal, in which judges respond to the various *dubia* presented in the judge’s decree introducing litigation [Rozkrut 2019, 3048]. A sentence, in contrast, is a ruling given by a judge who examines the dispute referred to him by the contending parties, as required by law, and resolves it accordingly [Szafrński 1963, 275]. It should be noted that the ecclesiastical legislator distinguishes between two types of sentences, referred to in Canon 1607: definitive sentences (*sententia definitiva*) and interlocutory sentences (*sententia interlocutoria*). A definitive sentence is a motivated act that resolves the subject of controversy, responding to all doubts identified in the *dubium* and, as a result, it defines the rights and obligations of the parties arising from the process, as well as the manner in which they are to be performed. In contrast, an interlocutory sentence is pronounced to resolve incidental cases arising during the trial [Cenalmor and Miras 2022, 485]. The doctrine of canon law also envisages a different division of sentences – into constitutive sentences combining absolving and convicting ones [Szafrński 1963, 280] and declaratory sentences (e.g. in nullity cases), which provide that during the marriage there was a cause that made it invalid. Put differently, a constitutive sentence modifies the current legal status; that is, it creates, alters or dissolves a legal relationship or right, while a declaratory sentence merely confirms the existence of a specific legal status.

Another division is into sentences handed down in criminal trials whose object, according to Canon 1400 § 1, are offences involving the imposition or declaration of a penalty (2°), judgements in controversies involving “the pursuit or vindication of the rights of physical or juridic persons, or the declaration of juridic facts” (1°), and sentences in “cases to declare the nullity of marriage” that find the truth about the parties’ marriage in order to ascertain whether the marriage, which was raised by Christ the Lord to the dignity of a sacrament, was contracted validly or invalidly [Szytchmiler 2007a, 266].

There is also a division into sentences given in first, second and further instance [ibid.]. The first tier is occupied by the diocesan, inter-diocesan or regional tribunal; at the second tier, there is the tribunal of appeal,

against the tribunal of the suffragan diocese; finally, there are the Holy See tribunals [Greszata 2007, 110].

Thus, our analysis here shows that, fundamentally, the science of canon law, either in its legal language or legislation, does not use the concept of a cumulative judgement, but this, nonetheless, does not resolve the question of what to call a ruling made in “aggregated proceedings”, in which the tribunal is required to examine several cases jointly, as mentioned above. No doubt, this is a sentence that can also be pronounced when cases are related to one another and will be examined in a single trial before the same tribunal; similarly, when a party brings a multiple, combined complaint based on several actions.

### Summary

Overall, it transpires from our analysis so far that in both state and canon law, the *ratio legis* of aggregating cases should be sought in procedural economy serving to save resources and reduce the duration of proceedings when implementing the principle of *connexorum idem est iudicium*. It also seems that in the context of Ockham’s ban on unnecessary multiplication of entities and the principles of rational legislative drafting, the norms of state and canon law on the consolidation of cases implement the associated principle of *simplicitas legibus amica*.

In state law, in civil procedure, the concept of cumulative judgement is not normative (statutory) in nature, so it does not function in legal language; however, it should be used in legal parlance, where both in the scholarship and case law there is no doubt that the outcome of ordering the consolidation of cases for joint examination in accordance with Article 219 CCP is the issuance of a cumulative judgement. Under criminal procedural law, the concept of a cumulative sentence is not only part of legal jargon, but also of penal legislation. It follows that in accordance with Article 568a § 1 CPP, a cumulative penalty may be imposed by a sentence that is not cumulative when the defendant has been convicted of more than one offence by a single verdict, and penalties of one kind or other penalties liable to aggregation have been imposed for these offences, or in a cumulative sentence in all other cases. In canon law, on the other hand, there is no concept of cumulative judgement. It also seems that in the literature and judicial case law this concept is not used, because no canonical tradition has

developed, according to which recognition by one and the same tribunal thanks to case aggregation results in the issuance of a concurrent sentence.

The nature of the cumulative judgement in civil proceedings boils down to a mere technical merger of cases, which does not constitute a new civil case, while in Polish procedural criminal law the cumulative sentence is, *sui generis*, a quasi-ruling on the merits of the case and a quasi-constitutive ruling, which does not fit into the traditional division of judgements due to the major differences in the procedure aimed at its issuance, the subject of which is a separate legal issue: a sentence imposing a cumulative penalty based on final sentences imputing an offence to the perpetrator and imposing a penalty. In canon law, however, in processes for the annulment of marriage, the sentence rendered by the ecclesiastical court is declaratory, not constitutive, while it is a resolution of the case as to its merits, since the sentence is an answer to the doubts (*dubium*).

Considering the functioning of the concepts of cumulative judgement and cumulative sentence in civil and criminal law, respectively, and given that the normative nature of the two rulings differs, it should be indicated that the principle of terminological consistency of legal language stipulated in § 10 of the Principles of Legal Drafting, in line with the jurisprudence of the Constitutional Court, should be applied in individual normative acts, but also, within specific fields of law, and as far as possible and purposeful within the system of law as a whole.<sup>33</sup> The general legislative directives cited above can be derogated by way of exception, for example when formulating provisions forming part of different branches of law.<sup>34</sup>

*De lege ferenda*, I would venture to postulate that the concept of cumulative judgement be incorporated in the legal language of Polish civil procedure, as this idea has been well-entrenched in the doctrine and case law. At the same time, it is important to keep in mind the constitutional court's jurisprudence, according to which, when a term with the same wording is used in different legal acts, it is mandatory that each legal act contain a precise definition of it.<sup>35</sup> This is because the legislator, when creating laws, observes the maxim *lege non distinguente nec nostrum est distinguere!*

---

<sup>33</sup> Judgement of the Constitutional Tribunal of 6 May 2008, K 18/05, Lex no. 372375.

<sup>34</sup> Resolution of the Constitutional Tribunal of 8 March 1995, W 13/94, Lex no. 25544.

<sup>35</sup> Judgement of the Constitutional Tribunal of 14 September 2001, SK 11/00, Lex no. 49155.



## REFERENCES

- Carmen Peña, García. 2007. "El fuero de la conexión de causas en el proceso canónico de nulidad matrimonial. Consideraciones sobre su carácter obligatorio o voluntario." *Estudios Eclesiásticos* 82:843-54.
- Cenalmor, Daniel, and Jorge Miras. 2022. *Prawo kanoniczne*. Warszawa: Wolters Kluwer.
- Cieślak, Marian. 2011. "Polska procedura karna. Podstawowe założenia teoretyczne." In *Marian Cieślak. Działa wybrane. T. II*, edited by Stanisław Waltoś, 1-415. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego.
- Cieślak, Wojciech, and Krzysztof Woźniewski. 2012. *Leksykon prawa karnego procesowego. 100 podstawowych pojęć*. Warszawa: Wydawnictwo C.H. Beck.
- Daszkiewicz, Władysław. 1976. *Proces karny. Część ogólna*. Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika.
- Del Amo, León. 2011. "Właściwość sądu." In *Codex Iuris Canonici. Kodeks Prawa Kanonicznego. Komentarz. Powszechne i partykularne ustawodawstwo Kościoła katolickiego. Podstawowe akty polskiego prawa wyznaniowego*. Edycja polska na podstawie wydania hiszpańskiego, edited by Piotr Majer, 1050-1058. Kraków: Wolters Kluwer.
- Gaberle, Andrzej. 2004. *Leksykon polskie procedury karnej*. Gdańsk: Wydawnictwo ARCHE.
- Gapska, Edyta, and Joanna Studzińska. 2020. *Postępowanie nieprocesowe*. Wolters Kluwer.
- Góra-Błaszczkowska, Agnieszka. 2016. "Wyrok łączny." In *System Prawa Procesowego Cywilnego. Tom 2. Część 2. Postępowanie procesowe przed sądem pierwszej instancji*, edited by Tadeusz Wiśniewski, 656. Warszawa: Wolters Kluwer.
- Grajewski, Jan, and Edward Skrętowicz. 1996. *Kodeks postępowania karnego z komentarzem*. Gdańsk: Wydawnictwo Prawnicze Lex.
- Greszata, Marta. 2007. *Kanoniczne procesy małżeńskie. Pomoc dla studentów*. Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu.
- Gudowski, Jacek. 2020. *Kodeks postępowania cywilnego. Orzecznictwo. Piśmiennictwo. Tom II*. Warszawa: Wolters Kluwer.
- Kala, Dariusz. 2003. *Postępowanie w przedmiocie wydania wyroku łącznego. Zagadnienia karnomaterialne i procesowe*. Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa. Dom Organizatora.
- Kala, Dariusz, and Maja Klubińska. 2017. *Kara łączna i wyrok łączny*. Kraków: Wydawnictwo Krajowej Szkoły Sądownictwa i Prokuratury.
- Kalinowski, Stefan. 1972. *Polski proces karny*. Warszawa: Wydawnictwo Naukowe PWN.

- Kowalski, Karol. 2017. "Skład sądu wydającego wyrok łączny w pierwszej instancji." *Internetowy Przegląd Prawniczy Towarzystwa Biblioteki Słuchaczy Prawa Uniwersytetu Jagiellońskiego* 5:64-77.
- Krauze, Zbigniew. 1969. "Wyrok łączny w projekcie kodeksu postępowania karnego." *Nowe Prawo* 2:273-75.
- Krukowski, Józef. 2007. "Sądy w ogólności." In *Komentarz do Kodeksu Prawa Kanonicznego*. Vol. V: *Księga VII. Procesy*, edited by Józef Krukowski, 12-122. Poznań: Pallottinum.
- Kwiatkowski, Zbigniew. 1988. "Istota postępowania o wydanie wyroku łącznego." *Palestra* 8-9:95-102.
- Lipczyńska, Maria, i Ryszard Ponikowski. 1986. *Mały komentarz do kodeksu postępowania karnego*. Warszawa: Państwowe Wydawnictwo Naukowe.
- Manowska, Małgorzata. 2022. *Kodeks postępowania cywilnego. Komentarz*. Warszawa: Wolters Kluwer. Lex el.
- Marszał, Kazimierz. 1982. *Przebieg procesu karnego*. Katowice: Państwowe Wydawnictwo Naukowe.
- Marszał, Kazimierz. 2000. "Instancyjność postępowania karnego w świetle art. 176 ust. 1 Konstytucji RP?" In *Zasady procesu karnego wobec wyzwań współczesności. Księga pamiątkowa ku czci Profesora Stanisława Waltosia*, edited by Janina Czapska, Andrzej Gaberle, Andrzej Światłowski, et al., 701-10. Warszawa: Wydawnictwo Prawnicze PWN.
- Mierzejewski, Piotr. 2010. *Kompendium postępowania karnego*. Warszawa: Wydawnictwo C.H. Beck.
- Peiper, Leon. 1933. "W kwestji wyroku łącznego." *Gazeta Sądowa Warszawska* 33:517-18.
- Rogosiński, Piotr. 2016. *Kodeks postępowania karnego. Komentarz*. Warszawa: Wolters Kluwer. Lex el.
- Rozkrut, Tomasz. 2019. "Wydanie wyroku." In *Leksykon prawa kanonicznego*, red. Mirosław Sitarz, 3048-3049. Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu.
- Rutkowska, Aleksandra, and Dariusz Rutkowski. 2020. "Połączenie spraw do łącznego rozpoznania." In *Kodeks postępowania cywilnego. Postępowanie procesowe. Komentarz*, edited by Olga Piaskowska, 651-52. Warszawa: Wolters Kluwer.
- Sztejman, Albin. 1933. "Wyrok łączny." *Gazeta Sądowa Warszawska* 4:51-52.
- Sztychmiller, Ryszard. 2000. *Sądownictwo kościelne w służbie praw człowieka*. Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego.
- Sztychmiller, Ryszard. 2003. *Ochrona praw człowieka w normach kanonicznego procesu spornego*. Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego.

- Sztychmiller, Ryszard. 2007a. "Orzeczenia sędziego." In *Komentarz do Instrukcji procesowej „Dignitas connubii”*, edited by Tomasz Rozkrut, 265-76. Sandomierz: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu.
- Sztychmiller, Ryszard. 2007b. "Właściwość sądu." In *Komentarz do Instrukcji procesowej „Dignitas connubii”*, edited by Tomasz Rozkrut, 35-56. Sandomierz: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu.
- Śliwiński, Stanisław. 1948. *Polski proces karny przed sądem powszechnym. Zasady ogólne*. Warszawa: Nakład Gebethnera i Wolffa.
- Świątłowski, Andrzej. 2008. *Jedna czy wiele procedur karnych*. Sopot: Wydawnictwo ARCHE.
- Świątłowski, Andrzej. 2015. "Wyrok łączny." In *Kodeks postępowania karnego. Komentarz*, edited by Jerzy Skorupka, 1351-377. Warszawa: Wydawnictwo C.H. Beck.
- Świecki, Dariusz. 2015. "Orzekanie kary łącznej." In *Kodeks postępowania karnego. Tom II. Komentarz*, edited by Dariusz Świecki, 642-86. Warszawa: Wolters Kluwer.
- Szafrąński, Władysław. 1963. "Wyrok sądowy w kościelnym procesie małżeńskim." *Prawo Kanoniczne* 6, no. 1-4:213-359.
- Waltoś, Stanisław, and Piotr Hofmański. 2023. *Proces karny. Zarys sytemu*. Warszawa: Wolters Kluwer.
- Wędrychowski, Marek. 1999. "Postępowania po uprawomocnieniu się orzeczenia sądu." In *Nowe uregulowania prawne w kodeksie postępowania karnego z 1997 r.*, edited by Piotr Kruszyński, 407-65. Warszawa: Dom Wydawniczy ABC.
- Wiśniewski, Tadeusz. 2013. *Przebieg procesu cywilnego*. Warszawa: Wolters Kluwer.